IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SEVENTH DAY OF JULY
TWO THOUSAND AND FOUR

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PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 13100 of 2004

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Between:

Managing Committee of the Bureau of Economics and

Statistics Employees Cooperative Housing Society Ltd.
Reg No.TAB 156, 5-4-10, IV Floor, Sri Krishna Krupa,

J.N.Road, Abids, Hyderabad represented by its President

..... PETITIONER

AND

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1 Commissioner for Cooperation & Registrar of

Cooperative Societies, Gruhakalpa Buildings, Nampally,

Hyderabad
2 Joint Registrar/District Cooperative Societies,

Hyderabad (Urban) District, Hyderabad
3 Deputy Registrar/ Divisional Cooperative Officer,

Secunderabad Division, APHB Nampally, Hyderabad
4 Sub-Divisional Cooperative Officer/Inspection Officer,

O/o the Deputy Registrar/ Divisional Cooperative

Officer, Secunderabad Division, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction more particularly in the nature of Writ of Mandamus declaring orders dated 19-7-2004 in Rc.No.3849/98 Hsg. of the 2nd respondent i.e.

the Joint Registrar/ District Cooperative Officer, Hyderabad (Urban) District, Hyderabad as null and void as it is without jurisdiction contrary to law, without application of mind, an abuse and a colourful exercise of power besides being violative of the very provisions Sec.52 (1) of the A.P. Coop.Societies Act 7 of 1964, apart from being offending the cardinal principles of natural justice and consequently set aside his status-quo orders of even No.dated 19-7-2004 and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case

Counsel for the Petitioner: MR.D.V.BHADRAM

Counsel for the Respondents: GP FOR COOPERATION

The Court made the following ORDER:

The Managing Committee of Bureau of Economics and Statistics Employees Cooperative Housing Society Limited ('the Society' for brevity) assails the proceedings bearing No.3849/98-Hsq, dated 19-07-2004 whereby and whereunder second respondent purporting to exercise powers under Section 52 of the A.P. Cooperative Societies Act 1964 (for brevity 'the Act') ordered inspection into the working of the Society and authorized fourth respondent to conduct statutory inspection with reference to the allegations in the representation dated 17-7-2004 given by the members and residents of the colony.

The petitioner-society was registered in 1976. The elections were conducted from time to time and by reason of the elections conducted on 23-5-2001 Managing Committee was elected whose term would be expired on 22-5-2006. It is the case of the petitioner that first respondent accorded permission to the society to lease out its land earmarked for shopping complex to Viswa Vikas Consumers' Cooperative Stores Limited, Hyderabad. Accordingly the building constructed on the open land was leased out in the year 1995 for a period of ten years, which would expire on 31-12-2004 and that the leasing of the land was allegedly in the interest of the society. However, the second respondent by the impugned order dated 19-7-2004 ordered inspection into the affairs of the society without any jurisdiction.

A reading of the impugned order would disclose that members of the society and members of welfare association submitted a representations to second respondent requesting to cancel permission for leasing out the societies land and building to Viswa Vikas Stores. They alleged that the said lease was mala fide and was resorted to facilitate grabbing of society's land. It appears, the Divisional Cooperative Officer looked into the said representation and submitted a report to the second respondent informing that there are allegations against the president of the society that he has collected money from members in the name of developmental charges, that he is taking huge expenditure for development works without actually taking any development works and that he is maintaining duplicate receipt books without maintaining proper accounts. For these reasons second respondent on his own motion ordered statutory inspection into the allegations made by the members of the petitioner society as well as the working of the society.

The learned counsel for the petitioner Sri D.V. Bhadram submits that the impugned order is issued without jurisdiction, power or authority and that first respondent has no jurisdiction to order inspection under Section 52 of the Act. He would submit that under Section 52 of the Act an inspection can be ordered only on a complaint given by the creditor after such creditor complied with the requirement under proviso to sub-section (1) of Section 52 of the Act. He further submits that even though *suo motu* inspection can be ordered by the Registrar into the working of the society or to inspect the books of the society, the same should be in relation to the debts incurred by the society and not otherwise.

Though, the learned counsel for the petitioner strenuously made submissions around the core issue indicated hereinabove, this court finds no merit in the same. Section 52 of the Act reads as under.

Section 52:- Inspection:- (1) The Registrar may, of his own motion or on the application of a creditor of a society, inspect or direct any person authorized by him by a general or special order in this behalf to inspect the books of the society.

(Such inspection shall be completed within a period of three months from the date of order of inspection)

Provided that no such inspection shall be made or directed on the application of a creditor unless the creditor:-

a. satisfies the Registrar that the debt is a sum then due and that he has demanded payment thereof and has not received satisfaction within a reasonable time ; and

b. deposits with the Registrar such sum as security, for the costs of the proposed inspection as the Registrar may require.

(2) The Registrar or any person authorized by him under sub-section (1) shall prepare a report of inspection which shall be communicated to the Managing Committee of the Society together with the findings of the Registrar thereon. It shall be the responsibility of the Managing Committee to place the inspection report together with the findings of the Registrar before the General Body or Special General Body convened for the purpose for its information, within a period of one month of the competent to initiate action under report by Registrar. The Registrar shall be competent to initiate action under the provisions of this Act, if the Committee fails to take action as aforesaid:

Provided that notwithstanding anything contained in this Act and Rules made thereunder, the bye-laws of a society and the action of the society in placing the inspection report along with the findings of the Registrar, the Registrar shall not be precluded from taking, follow up action as may be required on the basis of inspection report:

Provided further that such action shall not be nullified even if the General Body of the Society passes a resolution negativing the findings of the Registrar:

Provided also that the Registrar may for reasons to be recorded in writing extend the period of three months for completion of inspection for a further period not exceeding two months."

Sub-section (1) of Section 52 empowers the Registrar to inspect or direct inspection by an authorized person into the books of the society. Such inspection

can be on his own motion or an application of creditor of the society. If a creditor makes an application seeking inspection of the books of accounts, the requirement in the proviso to sub-section (1) are to be complied with namely, satisfying the Registrar that the debt has not been discharged within the reasonable time and that the creditor deposited with the Registrar such sum as to meet the costs of the inspection. Merely because certain requirements are to be fulfilled, where a complaint is made by the creditor, it cannot be construed that the *suo motu* power to order inspection is circumscribed by the proviso to sub-section (1) of Section 52 of the Act. A reading of sub-section (2) of Section 52 of the Act, would show that after inspection a report of the inspection has to be communicated to the Managing Committee, which has to be placed before a General Body and thereafter, the Registrar can initiate action under the provisions of the Act. Such action can be for supercession of the Managing Committee under Section 34 of the Act order for initiating sur-charge proceedings under Section 60(2) of the Act. An inspection under Section 52(1) of the Act can be made into all sorts of affairs of the society including inspection of books and any narrow interpretation as suggested by the learned counsel for the petitioner, is not warranted.

In the case on hand, the members of the society as well as the members of the welfare association made serious allegations against the president of the society alleging financial irregularities and misappropriation of funds including allegations of fraud and cheating. The minimum requirement of law is to order inspection under Section 52 of the Act. Further it is not always necessary that a report under Section 52 of the Act after inspection should lead to an adverse action against the Managing Committee or the president. Even if such adverse action is taken, the members of the Managing Committee or president are not without remedies. Insofar as the present *lis* is concerned, this court is convinced that on a true interpretation of Section 52(1) read with Section 52(2) of the Act, the inspection ordered by the second respondent into the working of the society and into the allegations made in the representation dated 17-7-2004 does not suffer from any lack of jurisdiction.

The Writ Petition is misconceived and is accordingly dismissed *in limini* at the admission stage.

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V.V.S. RAO, J.

27th July, 2004

Js

ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1 Commissioner for Cooperation & Registrar of

Cooperative Societies, Gruhakalpa Buildings, Nampally,

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